

AMENDED IN SENATE JULY 9, 2003

AMENDED IN SENATE JUNE 11, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 104**

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**Introduced by Assembly Member Lowenthal**

January 10, 2003

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An act to add Section 1365.2 to the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 104, as amended, Lowenthal. Common interest developments: account books.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires that an association manage the common interest development and that the association make available specified financial documents to the members of the association.

This bill would require an association to make the accounting books and records *and the minutes of proceedings* of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified. The bill would permit the association, under certain circumstances, to satisfy these requirements by providing copies of the requested records by mail. The bill would permit the association to withhold or redact information from the accounting books and records *and the minutes of proceedings* when the release of the information is reasonably likely to lead to identity theft, fraud in connection with the association, or is privileged by law,

with specified exceptions regarding compensation of employees, vendors, and contractors. The bill would prohibit, *among other things*, the sale or commercial use of *the* association's accounting books and records *and minutes of proceedings*. The bill would permit the member to bring an action to enforce the right to inspect and copy from the accounting books and records *and the minutes of proceedings*, and would require a court to award the member reasonable costs and expenses, as specified, if it finds that the association unreasonably withheld access to the books and records *and the minutes of proceedings*. The bill would also permit the court to assess a civil penalty of up to \$500 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1365.2 is added to the Civil Code, to  
2 read:

3 1365.2. (a) (1) The association shall make the accounting  
4 books and records *and the minutes of proceedings* of the  
5 association available for inspection and copying by a member of  
6 the association, or the member's designated representative, as  
7 provided by this section.

8 (2) A member of the association may designate another person  
9 to inspect and copy the accounting books and records *and the*  
10 *minutes of proceedings* on the member's behalf. The member shall  
11 make this designation in writing.

12 (b) (1) The association shall make the accounting books and  
13 records *and the minutes of proceedings* available for inspection  
14 and copying in the association's business office within the  
15 common interest development.

16 (2) If the association does not have a business office within the  
17 development, the association shall make the accounting books and  
18 records *and minutes of proceedings* available for inspection and  
19 copying at a place that the requesting member and the association  
20 agree upon.

21 (3) If the association and the requesting member cannot agree  
22 upon a place for inspection and copying pursuant to paragraph (2),  
23 or if the requesting member submits a written request directly to  
24 the association for copies, the association may satisfy the

1 requirement to make the accounting books and records *and the*  
2 *minutes of proceedings* available for inspection and copying by  
3 mailing copies of the requested records to the member by  
4 first-class mail within 10 days of receiving the member's request.  
5 The association may bill the requesting member for its actual,  
6 reasonable costs for copying and mailing requested documents.  
7 The association shall inform the member of *the amount of* the  
8 copying and mailing costs before sending the requested  
9 documents.

10 (c) (1) Except as provided in paragraph (2), the association  
11 may withhold or redact information from the accounting books  
12 and records *and the minutes of proceedings* for any of the  
13 following reasons:

14 (A) The release of the information is reasonably likely to lead  
15 to identity theft. For the purposes of this section, "identity theft"  
16 means the unauthorized use of another person's personal  
17 identifying information to obtain credit, goods, services, money,  
18 or property.

19 (B) The release of the information is reasonably likely to lead  
20 to fraud in connection with the association.

21 (C) The information is privileged under law.

22 (2) ~~The~~ *Except as provided by the attorney-client privilege, the*  
23 association may not withhold or redact information concerning the  
24 compensation paid to employees, vendors, or contractors.  
25 *Compensation information for individual employees shall be set*  
26 *forth by job classification or title, not by the employee's name,*  
27 *social security number, or other personal information.*

28 ~~(d) (1) A person may not sell or use for a commercial purpose~~  
29 ~~the accounting books and records of an association or any~~  
30 ~~information from them.~~

31 *(d) (1) The accounting books and records and the minutes of*  
32 *proceedings of an association, and any information from them,*  
33 *may not be sold, used for a commercial purpose, or used for any*  
34 *other purpose not reasonably related to a member's interest as a*  
35 *member. An association may bring an action against any person*  
36 *who violates this section for injunctive relief and for actual*  
37 *damages to the association caused by the violation.*

38 (2) This section may not be construed to limit the right of an  
39 association to damages for misuse of information obtained from  
40 the accounting books and records *and the minutes of proceedings*

1 pursuant to this section or to limit the right of an association to  
2 injunctive relief to stop the misuse of this information.

3 (3) An association shall be entitled to recover reasonable costs  
4 and expenses, including reasonable attorney's fees, in a successful  
5 action to enforce its rights under this section.

6 (e) A member of an association may bring an action to enforce  
7 the member's right to inspect and copy the accounting books and  
8 records *and the minutes of proceedings* of the association. If a  
9 court finds that the association unreasonably withheld access to the  
10 accounting books and records *and the minutes of proceedings*, the  
11 court shall award the member reasonable costs and expenses,  
12 including reasonable attorney's fees, and may assess a civil penalty  
13 of up to five hundred dollars (\$500) for each violation.

